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SENATE

REPORT
No. 804

LOUIS E. GABEL

SEPTEMBER 24 (legislative day, SEPTEMBER 19), 1951.—Ordered to be printed

Mr. McCARRAN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1970]

The Committee on the Judiciary, to which was referred the bill (S. 1970) for the relief of Louis E. Gabel, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

PURPOSE

The purpose of this bill is to pay Louis E. Gabel, an individual trading as Gabel Construction Co., of Orlando, Fla., the sum of \$24,916.71 in full satisfaction of his claim against the United States for uncompensated losses sustained by him under contract number NOY-9336, for the construction of a water-softening plant at Florida City, Fla., for the navy yard at Key West, Fla., as a result of a delay in receiving materials and equipment provided for in said contract.

STATEMENT

The Gabel Construction Co. and the United States Government entered into a contract (NOY-9336) for the construction of a water-softening plant in Florida City, Fla. The contract provided that the work would be completed within 5 months after the execution of the contract for a consideration of \$180,000. Change orders for additional work eventually brought the total cost under the contract to \$191,511.

The contractors who submitted bids for this contract were given the option of choosing one of several alternative plans on which they cared to bid. One such option permitted the use of equipment which could be obtained from the Permutit Co. The Gabel Construction

Co. placed a bid on the plans which would include the Permutit equipment as well as a bid on the other optional plans. The bid of the Gabel Construction Co. on the plan which specified Permutit equipment was accepted by the Navy.

No sooner had the contract been negotiated than the Gabel Construction Co. attempted to perform its obligations thereunder. But the construction company discovered that the Navy had not granted them a priority of sufficient import to obtain the Permutit equipment necessary for the timely completion of the job. Application was made for a higher priority, but by the time the higher priority was forthcoming, a still higher priority was necessary to enable Gabel Construction Co. to secure the essential equipment.

The failure of the Navy Department to grant the Gabel Construction Co. a sufficient priority resulted in an extensive delay in the completion of the contract, during which time the Gabel Construction Co. suffered mounting labor and equipment costs; their labor and equipment were "frozen on the job" by the Navy representative in charge, making it impossible to utilize it elsewhere. The Gabel Construction Co. did complete the job 18 months after the contract had been executed; this was a delay of 13 months over and beyond the expected completion date.

Mr. Gable sought relief through the introduction of private legislation in the Eightieth Congress. As a result, the Congress sent Mr. Gable to the District Court for the Southern District of Florida for the purpose of making judicial findings of fact in connection with this claim. The court only allowed a recovery in the amount of \$26,132.69. The court, in assessing the losses of Mr. Gable, determined only the labor loss suffered by him in his attempt to perform the contract and did not make an award for the other items of loss which he claimed. The total cost on this project, including \$7,200 for personal services rendered by Mr. Gabel, amounted to \$252,536.40. The Government has paid Mr. Gabel \$227,619.69, and this bill will compensate Mr. Gable for the amount of the costs which exceed the sum he has received.

In the Eighty-first Congress, second session, S. 2702 was introduced to pay the sum of \$67,000 to Mr. Gable for the same reasons as set out in the present bill, and that amount was reduced to \$38,956.42 before it was approved by both the Senate and the House.

In the Eighty-first Congress the claim was referred to a subcommittee of the Senate Judiciary Committee and hearings were held. Both the claimant and a member of the Bureau of Yards and Docks of the United States Navy were heard. The hearings substantiate the finding that the failure of Mr. Gabel to complete the contract within the times prescribed resulted solely from the failure of the United States Navy to grant Mr. Gabel the necessary priority and not to any negligence on his part. The record further shows that this failure to grant Mr. Gabel's priority resulted in the freezing of Mr. Gabel's equipment unnecessarily with consequent loss to Mr. Gabel. Prior to this contract, the Gabel Construction Co. had approximately \$100,000 in cash, but after the performance of this contract the Gabel Construction Co. was bankrupt.

Although the House and the Senate passed S. 2702 in the second session of the Eighty-first Congress in the amount of \$38,956.42, the President on December 29, 1950, vetoed the bill. The veto of S. 2702 was predicated on the fact that Mr. Gabel had had his day

in court. This was in substance the objection of the Department of Justice and the Secretary of the Navy in their reports submitted in relation to S. 2702 in the Eighty-first Congress, second session, which are set forth in their entirety below together with the veto message of the President.

This committee has been informed that the President is inclined, after a review of all the facts, to reconsider this claim, and would now approve a bill providing for payment of a sum equaling the contractor's actual remaining out-of-pocket loss on all his Government contracts; which is what this bill will do. Consequently, the committee recommends that the bill be favorably considered on the ground that Mr. Gabel should be compensated for the losses which he suffered due to the failure of the United States Navy to grant a sufficient priority to the claimant for the completion of the job within the time specified by the contract.

DEPARTMENT OF JUSTICE,
OFFICE OF THE ASSISTANT TO THE ATTORNEY GENERAL,
Washington, D. C., May 16, 1950.

HON. PAT McCARRAN,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

MY DEAR SENATOR: This is in response to your request for the views of the Department of Justice concerning the bill (S. 2702) for the relief of Louis E. Gabel.

The bill would provide for payment of the sum of \$67,000 to Louis E. Gabel, an individual trading as Gabel Construction Co., of Orlando, Fla., in full satisfaction of his claim against the United States for uncompensated losses and damages sustained by him under a contract for the construction of a water-softening plant at Florida City, Fla., for the navy yard at Key West, Fla., as the result of a delay in receiving materials and equipment provided for in said contract.

In compliance with your request, a report was obtained from the Department of the Navy concerning this legislation. That report, which is enclosed, states that the contract in question was a lump-sum contract for which claimant was low bidder at \$180,000. Change orders for additional work brought the total contract payments to \$191,511.

The Navy Department states that it has been informed by claimant that the alleged loss was incurred by reason of the fact that the project had run 13 months over the expected completion date for reasons beyond his control and that this delay allegedly occurred because claimant's principal subcontractor, the Permutit Co., required 16 months to complete delivery of its essential equipment instead of the 16 weeks which had been anticipated.

The Navy Department states that it did not specify Permutit equipment but accepted claimant's proposal to furnish such equipment as complying with the Navy's requirements under the contract. It observes that specific reference to Permutit Co.'s proposal to the contractor was incorporated into the contract only for the purpose of identifying the type of equipment to be furnished to the Navy by the contractor. It points out that there would seem to be no basis, therefore, for concluding that the Government assumed any responsibility for the delivery dates which Permutit agreed upon with the contractor.

The Navy Department states that claimant was the beneficiary of Public Law 450, Eightieth Congress, approved July 2, 1948, which authorized the District Court of the United States for the Southern District of Florida to make a judicial finding of fact in connection with the alleged losses sustained by claimant arising out of or attributable to the alleged delay in supplying materials as provided for under that contract. The court determined claimant's loss to be \$26,000, and certified that amount to the Secretary of the Treasury for payment. The Navy Department notes that this procedure, which in itself was highly unusual, was intended to constitute complete satisfaction to Mr. Gabel for his alleged losses.

The Navy Department states that in view of the foregoing, it does not favor enactment of the bill.

From the information contained in the files of the Department of Justice it appears that a bill (H. R. 1734) was introduced in claimant's behalf in the Eightieth Congress, providing for payment of \$136,121.86, which the contractor originally claimed that he lost in performing the contract. The House Judiciary Committee, however, recommended that such items as interest, speculative profits, and salary of Mr. Gabel should be disallowed and the total amount reduced to \$65,089.11. The Senate Judiciary Committee, after considering a similar bill (S. 2411) introduced in the same Congress, struck out the provision for a lump-sum payment and amended the bill to provide for suit in the District Court of the United States for the Southern District of Florida, and the measure was enacted in that form. In that suit, the petitioner originally claimed losses and damages in the amount of \$206,348.60, but this amount was later increased by him to \$226,251.15. The court on May 11, 1949, made findings of fact and conclusion of law. Among other things, the court found that with one exception he had failed to prove any of the items of damages claimed and that the evidence offered in proof was too remote, uncertain, and speculative to establish any of the alleged damage on these items with any degree of reasonable certainty. The court found and concluded that claimant had sustained loss and damage in the sum of only \$26,132.69.

The Chief of the Division of Bookkeeping and Warrants, Treasury Department, has advised that, in accordance with the court's findings and conclusion, Treasury check No. 33277 was issued and mailed to Louis E. Gabel to pay the damages found by the court to be due, and that such check was paid on September 27, 1949.

It thus appears to this Department that claimant has had his day in court. Although he alleged that he had sustained losses and damages aggregating \$226,251.15, he was unable to prove that he sustained losses and damages in excess of \$26,132.69 under the contract. Since it has been judicially determined that he had no legal claim against the United States and that the said losses and damages sustained by him arose out of or were attributable to delay in the supplying of materials by a subcontractor, it would appear that the enactment of the instant bill would result in a gratuitous grant of \$67,000 in addition to the \$26,132.69 which has already been paid to him.

There appears to be no legal or equitable basis whatsoever for any such additional grant to him from the Treasury and the Department of Justice accordingly concurs in the view of the Navy Department that the bill be not enacted.

The Director of the Bureau of the Budget has advised this Department that enactment of this legislation would not be in accord with the program of the President.

Yours sincerely,

PEYTON FORD,
The Assistant to the Attorney General.

THE SECRETARY OF THE NAVY,
Washington, December 29, 1949.

Hon. J. HOWARD McGRATH,
Attorney General, Washington, D. C.

SIR: By letter dated November 2, 1949, the Assistant to the Attorney General requested comment regarding the bill, S. 2702, for the relief of Louis E. Gabel, in order that the Department of Justice might submit a report thereon to the Committee on the Judiciary of the Senate.

The purpose of the bill is to authorize and direct payment of \$67,000 to Louis E. Gabel, an individual trading as the Gabel Construction Co., in full satisfaction of his claim against the United States for uncompensated losses and damages sustained by him under a contract between the claimant and the United States Government through the Bureau of Yards and Docks of the Navy Department. The losses and damages allegedly resulted from a delay in receiving materials and equipment provided for in the contract.

The contract in question, numbered NOY-9336, was a lump-sum contract for construction of a water-treatment plant at Florida City, Fla. The Gabel Construction Co. was low bidder at \$180,000 but change orders for additional work brought the total contract payments to \$191,511.

The Navy Department has been informed by the contractor that the alleged loss was incurred under the contract by reason of the fact that the project had run 13 months over the expected completion date for reasons beyond the control of the contractor. This 13-month overrun allegedly occurred because the con-

tractor's principal subcontractor (Permutit Co.) required 16 months to complete the delivery of its essential equipment instead of the 16 weeks which had been anticipated.

The Navy did not specify Permutit equipment, but accepted the contractor's proposal to furnish such equipment as complying with the Navy's requirements under the contract. Specific reference to Permutit Co.'s proposal to the contractor was incorporated into the contract only for the purpose of identifying the type of equipment to be furnished to the Navy by the contractor. There would seem to be no basis, therefore, for concluding that the Government assumed any responsibility for the delivery dates which Permutit agreed upon with the contractor.

Mr. Gabel was the beneficiary of legislation enacted during the Eightieth Congress. The act of July 2, 1948 (Private Law 450, 80th Cong.), entitled "An act for the relief of the Gabel Construction Company," authorized the District Court of the United States for the Southern District of Florida to make a judicial finding of fact in connection with the alleged losses sustained by Mr. Gabel under contract NOY-9336 arising out of or attributable to the alleged delay in supplying materials as provided for in that contract. The court, acting under the authority of that act, determined Mr. Gabel's loss to be \$26,000 and certified that amount to the Secretary of the Treasury for payment. This procedure, which in itself was highly unusual, was intended to constitute complete satisfaction to Mr. Gabel for his alleged losses.

In view of the foregoing, the Navy Department does not favor enactment of the bill, S. 2702.

Sincerely yours,

JOHN T. KOEHLER,
Assistant Secretary of the Navy.

RELIEF OF LOUIS E. GABEL—VETO MESSAGE

To the United States Senate:

I return herewith, without my approval, the enrolled bill (S. 2702) for the relief of Louis E. Gabel.

The bill provides for payment of the sum of \$38,956.42 to Louis E. Gabel, an individual trading as Gabel Construction Co., of Orlando, Fla., in full satisfaction of his claim against the United States for uncompensated losses and damages sustained by him in the performance of a contract for the construction of a water-softening plant at Florida City, Fla., for the navy yard at Key West, Fla., as a result of a delay in receiving materials and equipment provided for in the contract.

The claimant was the beneficiary of a private relief act (Private Law 450, 80th Cong., 2d sess., July 2, 1948), which conferred jurisdiction upon the District Court of the United States for the Southern District of Florida to "hear, determine, and render findings of fact as to the amount of loss and damages, if any, sustained" by him in the performance of this contract, and directed the Secretary of the Treasury to pay to him the amount so ascertained. Claimant brought proceedings under this act seeking to recover \$226,251.15 in alleged losses and damages. After a full hearing before the court during which the claimant was given ample opportunity to present his evidence, the court rendered an award in the amount of \$26,132.69 as representing the amount of loss or damage suffered by the claimant in the performance of the contract, and this amount was paid to him on September 27, 1949. This judgment was not predicated on any liability of the United States for the losses or damages incurred, but was arrived at solely in accordance with the directive of the private act which limited the court to a determination of the amount of such loss or damage without regard to its causation.

Thus, the claimant has had his day in court under the terms of a previous private jurisdictional relief act most favorable to him. As previously stated, Private Law No. 450 of the Eightieth Congress directed the court solely to "render findings of fact as to the amount of loss and damages * * * sustained" and consequently precluded the raising of any defense by the United States that it was not responsible for the losses claimant incurred. The favorable treatment thus afforded the claimant was in fact made the subject of comment by the district court in the rendition of its award to him. The court stated:

"The private act, conferring jurisdiction on this court for the purpose above stated, is a most unusual act. All other private acts conferring jurisdiction upon the courts for such determination have been based on a claim for damages resulting from some alleged act of the United States, or agency thereof. In this case,

no contention is made that the Government is liable for any damages growing out of the contract the Government had with Gabel."

As stated, these proceedings resulted in an award to the claimant of \$26,132.69. The award thus rendered constituted a judicial determination of the amount of losses or damages suffered by the claimant which is entitled to full respect. An additional appropriation such as is proposed by this bill for the purpose of making a further payment to claimant for his alleged losses must be regarded as a simple gratuity and is entirely unwarranted.

Accordingly, I am constrained to withhold my approval from the bill.

HARRY S. TRUMAN.

THE WHITE HOUSE, December 29, 1950.